IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 8TH MARCH 2007 / 17TH PHALGUNA 1928

Crl.MC.No. 640 of 2007()

[CR.NO.353/1999 OF KADAKKAL POLICE STATION]

PETITIONER: ACCUSED

BIJU, S/O.ABDUL KHADER,
KUNNATHU VEETTIL, CHUNDA MURI,
ITTIVA VILLAGE, KOLLAM DISTRICT.

BY ADV. SRI.K.V.ANIL KUMAR

RESPONDENTS: COMPLAINANT

THE SUB INSPECTOR OF POLICE,
KADAKKAL, REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 08/03/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.640 of 2007

Dated this the 8th day of March 2007

O R D E R

The petitioner faces indictment in a prosecution interalia under Section 3(1)(XI) of the Scheduled Caste/Scheduled Tribes (Prevention of Atrocities) Act. The crime was registered on the basis of a private complaint. It was referred to the police. Investigation was completed. Final report was filed. The petitioner was not available in India. He could not hence appear before the learned Magistrate. Consequently, a non-bailable warrant of arrest has been issued by the learned Magistrate to the petitioner. The petitioner, in these circumstances, has come to this court with the prayer that directions under Section 482 Cr.P.C may be issued in favour of the petitioner directing the learned Magistrate to release the petitioner on bail on the date of surrender itself.

2. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate, the circumstances under which he could not earlier appear before the learned Magistrate. I find absolutely no reason to assume

that the learned Magistrate would not consider the application for bail to be filed by the petitioner on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific directions appear to be necessary. Sufficient general directions have been issued in Alice George vs. Deputy Superintendent of Police [2003(1)KLT 339].

4. The learned counsel for the petitioner submits that because the offence under Section 3(1)(XI) of the Scheduled Caste/Scheduled Tribes(Prevention of Atrocities) Act is not triable by a court of Session, the learned Magistrate may not consider the bail application on merits. I find no merit in this apprehension also. This court has, in Ali v. State of Kerala [2000 (2) KLT 280, Shanu v. State of Kerala [2000(3) KLT 452, Krishnakumar v. State of Kerala [20005(1) KLD(Cri.)42] and P.P.Kader v. State of Kerala [2005(1) KLD(Cri.)250], made it very clear that the learned Magistrate must consider such an application for bail on merits and cannot divest himself of the jurisdiction merely because the offence under Section 3 of the Scheduled Caste/Scheduled Tribes (Prevention of Atrocities) Act is triable by a court of Session. The learned Magistrate is bound

to consider the application for bail on merits and pass appropriate orders.

4. In the result, this Crl.M.C is dismissed but with the specific observation that if the petitioner surrenders before the learned Magistrate and applies for bail, after giving sufficient prior notice to the learned Public Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously - on the date of surrender itself.

Hand over copy of this order to the learned counsel for the petitioner.

(R.BASANT, JUDGE)

jsr

R.BASANT, J

C.R.R.P.No.

ORDER

21ST DAY OF JULY 2006